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November 17, 1998

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Magalie Salas, Secretary
Federal Communications Commission
445 Twelfth Street, N.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

In re Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, **CC Docket No. 96-128**

Dear Ms. Salas:

Enclosed for filing in this docket are the original and one copy of a letter I sent to Lawrence Strickling of the Common Carrier Bureau on behalf of the RBOC/GTE/SNET Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902.

Yours sincerely,

Michael K. Kellogg

Michael K. Kellogg

Enclosure

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November 17, 1998

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Dear Mr. Strickling:

I am writing on behalf of the RBOC/GTE/SNET Payphone Coalition to ask the Commission to confirm that, under the Commission's current payphone compensation rules, the party with the obligation for paying per-call compensation is the carrier to whose switch a call is initially routed from the local exchange network. That carrier is relieved of the payment obligation only to the extent that a facilities-based reseller expressly identifies itself to the PSP as responsible for payment on calls to specific numbers and actually undertakes to pay per-call compensation on those calls.

This issue is of great importance to PSPs. Coalition members have found that the amount of compensation received from some of the major interexchange carriers has been from 20 to more than 50 percent less than the amount that Coalition members expected, based on their own records.[1] While there are several

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[1] This shortfall -- of which the reseller problem is a significant cause -- emphasizes that the Commission's decision to deny PSPs any allowance for bad debt and collection costs in the Second Report and Order was improper; the Commission should correct this error on reconsideration. Nor is the shortfall in compensation paid by the major IXCs the only problem: in the case

possible causes for the shortfall, one of the most significant is the failure of some carriers to pay compensation for calls that the carriers say have been routed to facilities-based resellers.

Section 64.1300(a) of the Commission's Rules requires that "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider. . . ." Thus, the owner of the facilities to which the local exchange carrier delivers the payphone call is obligated to pay the compensation. Under this rule, the facilities-based carrier, rather than a reseller, must pay. As the Commission explained, "Although we have concluded that the primary economic beneficiary of payphone calls should bear the burden of paying compensation for these calls, we conclude that, in the interests of administrative efficiency and lower costs, facilities-based carriers should pay the per-call compensation for the calls received by their reseller customers." First Report and Order, 11 FCC Rcd. at 20586, ¶ 86.

Some facilities-based carriers, however, subsequently pointed out that some resellers actually have their own facilities that could be used to track and measure their compensation obligations. As a result, in its Order on Reconsideration, the Commission held that "a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier." 11 FCC Rcd at 21277, ¶ 92. At the same time, "[i]f a carrier does not maintain its own switching capability, then . . . the underlying carrier remains obligated to pay compensation to the PSP in lieu of its customer that does not maintain a switching capability." Id.

This refinement stated in the Order on Reconsideration does not mean that the facilities-based carrier may simply decide on its own to stop paying compensation. That carrier is relieved of

of many smaller carriers, Coalition members have yet to receive any compensation, despite collection efforts.

its obligation to pay only when the reseller explicitly accepts the obligation to pay. As the Bureau found earlier this year, some "facilities-based IXCs . . . are not required to pay compensation on particular 800 number calls because their switch-based resale customers have identified themselves as responsible for paying the compensation . . . ." Memorandum Opinion and Order, CC Dkt. No. 96-128, DA 98-642, ¶ 38(rel. Apr. 3, 1998) (emphasis added). If the reseller does not identify itself and expressly undertake to pay per-call compensation, then the facilities-based carrier remains liable to the PSP.

Commission confirmation of these rules would be helpful because certain facilities-based long distance carriers have unilaterally decided not to pay compensation even where no reseller has identified itself as responsible for payment.[2] Sprint, for example, disputes its obligation to pay compensation for calls it says are routed to a reseller that leases or owns switching capacity used to complete the call, whether or not that reseller has identified itself as responsible for the compensation.[3] Sprint's interpretation of the rules, which we believe has also been taken by other carriers, makes the Commission's compensation scheme unworkable.

For example, under Sprint's interpretation, Sprint could refuse to pay for 30 percent of 1000 calls delivered to it from a particular payphone because it believes that its reseller

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[2] AT&T, which has rightly recognized the scope of its obligations concerning this reseller issue, has informed the Coalition that it is tracking and paying compensation for all calls routed to resellers, with the exception of a single reseller, which has specifically identified itself and taken on the obligation to pay per-call compensation directly. Unfortunately, other carriers have not followed AT&T's approach.

[3] Sprint does not dispute that it remains obligated to pay compensation for reseller calls that are not routed through the reseller's switch.

customers have switches that can track those calls. Sprint would thus send the PSP compensation for only 700 calls. It has been the practice of Sprint and the other carriers not to provide any detail on which calls this payment covers. Thus, Sprint would not identify which 700 calls it has paid for, and the PSP would correspondingly have no idea which 300 calls have not been paid for.[4] The only way the PSP could find that out would be by sending Sprint a list of every one of the 1000 called numbers and asking Sprint to identify which calls it has paid for, which it believes are the responsibility of resellers, and who those resellers are. Sprint, in turn, could only do this by investigating each of the called numbers. If one multiplies this process times 2 million payphones, one can see that the burden on both PSPs and IXCs is enormous.[5]

The Bureau could eliminate many disputes over the scope of obligations for reseller calls and reduce the shortfall in payment of per-call compensation by confirming what the Coalition believes is the only proper interpretation of the Commission's current rules -- that the owner of the "first switch" is liable unless some other carrier expressly identifies itself to the PSP as having the obligation and actually undertakes to pay per-call

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[4] Although the LEC can tell a PSP which carrier identification code is associated with a given 800 number, the LEC has no way of knowing whether the call was subsequently routed to a reseller, who the reseller was, or what sort of switch the reseller might deploy. Moreover, a single call may be routed differently from month to month, week to week, day to day, or even depending on the time of day. All such information is available only to the owner of the "first switch" to which the call is routed.

[5] Indeed, Sprint itself has recognized the huge burden this process would impose and has demanded compensation for identifying which calls are the responsibility of which resellers.

compensation on those calls.[6] This identification could be by letter directly to the PSP, by posting the information on a publically available Web site or -- as discussed below -- by obtaining a carrier identification code ("CIC") for the traffic in question.

In most cases, the PSP can identify the owner (or lessee) of the "first switch" with relative ease. However, when the Commission revisits this issue in the course of the pending reconsideration proceeding, the Coalition believes that the best way to improve the reconciliation of per-call compensation obligations would be to place the obligation for payment of per-call compensation on the carrier identified by the CIC associated with the called number.[7] By adopting this "CIC" solution, the Commission can ensure that the party with the payment obligation and the PSP on whose payphone the call originates can "see" each other: the CIC associated with the called number – information that LECs may make available to PSPs – will identify the party with the payment obligation. Indeed, getting a CIC is one -- and certainly the best -- way for a switch-based reseller to "identify" itself as responsible for per-call compensation. Defining per-call compensation obligations by reference to CICs rather than by reference to the "first switch" is a better solution, because the databases already available in the industry

[6] This interpretation of the "switching capability" requirement is also consistent with the Commission's requirement that LECs make Flex ANI available for payphone lines. In many cases, an IXC who requests Flex ANI will nonetheless strip off the Flex ANI digits before passing the call on to a reseller. Thus, the only way for the Commission to ensure that the Flex ANI is available to the IXC that has the obligation to track compensable calls and pay per-call compensation is to confirm that the obligation is on the owner (or lessee) of the "first switch."

[7] The carrier identified by the CIC and the carrier with the "first switch" will usually, but not always, be the same.

associate numbers with CICs, not switches. The reconciliation process between PSPs and carriers would, therefore, be further simplified.

Neither the confirmation of existing rules nor the suggested revision to those rules would cause hardship to carriers; to the contrary, it would relieve them of the tedious and potentially costly obligation of identifying the resellers responsible for hundreds of thousands of 800 numbers, and millions of calls.

Please call me at (202) 326-7902 if I can provide any further information.

Sincerely yours,

Michael Kellogg

Michael K. Kellogg

cc: Richard Rubin
Leonard S. Sawicki
Richard Juhnke
Richard Whitt
Rachel Rothstein
Michael J. Shortley, III
Glenn Reynolds
Craig Stroup
Greg Lipscomb
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Mark Seifert
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